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cc: order, docket, remand letter to
Riverside Superior Court, No. RIC 10003748

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE DRAKE, an individual,) Case No. EDCV 10-00396 DDP (DTBx)
and DARLENE DRAKE, an)
individual) **ORDER GRANTING MOTION TO DISMISS**
) **AND REMANDING CASE TO STATE COURT**
Plaintiffs,) [Motion filed on March 31, 2010]
)
v.)
)
MIDLAND MORTGAGE CO., a)
business entity form)
unknown, QUALITY LOAN)
SERVICE CORP., a)
corporation, and DOES 1 to)
100)
)
Defendants.)
_____)

This matter comes before the Court on a motion to dismiss for failure to state a claim filed by the defendant Midland Mortgage Co. ("Midland").

This case arises from the defendants' non-judicial foreclosure against Plaintiffs home following Plaintiffs' default on their residential mortgage. Plaintiffs filed suit against the defendants on March 3, 2010, in Riverside Superior Court, raising causes of action under state and federal law. The defendants removed on March 15, 2010, based on federal question jurisdiction. On March

1 31, 2010, Midland filed this motion to dismiss, which was scheduled
2 for a hearing on May 17, 2010.

3 Central District of California Local Rule 7-9 requires that
4 the non-moving party file either an opposition or a statement of
5 non-opposition to the motion by no later than twenty-one days
6 before the date designated for the hearing of the motion. C.D.
7 Cal. Local R. 7-9. Local Rule 7-12 provides that "[t]he failure to
8 file any required paper, or the failure to file it within the
9 deadline, may be deemed consent to the granting or denial of the
10 motion." C.D. Cal. Local R. 7-12. Pursuant to the local rules,
11 Plaintiffs' opposition to the motion was due no later than April
12 26, 2010. As of the date of this Order, Plaintiffs have not filed
13 any response to the motion. The Court construes Plaintiffs'
14 failure to oppose the motion as consent to granting the motion.

15 For the foregoing reasons, Midland's motion to dismiss is
16 GRANTED and all claims against Midland are DISMISSED WITH
17 PREJUDICE. The remaining claims in this case asserted against
18 Quality Loan Services Corp. all arise under state law. Pursuant to
19 28 U.S.C. § 1367(c)(3), the Court declines to exercise supplemental
20 jurisdiction over those claims and therefore REMANDS this case to
21 state court.

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24 IT IS SO ORDERED.

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27 Dated: May 21, 2010

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DEAN D. PREGERSON
United States District Judge